

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

No. 14mj151

Plaintiff,

vs.

TRANSCRIPT OF
INITIAL APPEARANCE AND
RULE 5 HEARING

DENNIS JOHN IRVIN,

Defendant.

/ (from digital recording)

The Hearing held before the Honorable Leonard T. Strand, Magistrate Judge of the United States District Court for the Northern District of Iowa, at the Federal Courthouse, 320 Sixth Street, Sioux City, Iowa, May 30, 2014, commencing at 9:28 a.m.

APPEARANCES

For the Plaintiff: TIMOTHY T. DUAX, ESQ.
Assistant United States Attorney
Ho-Chunk Centre - Suite 670
600 Fourth Street
Sioux City, IA 51101

For the Defendant: MATTHEW METZGAR, ESQ.
Rhinehart Law
2000 Leech Avenue
Sioux City, IA 51106

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1 THE COURT: This is United States versus Dennis Irvin.
2 Mr. Irvin is present in the courtroom with his attorney,
3 Mr. Metzgar. Mr. Duax is here for the United States. We're
4 here today for an initial appearance, a Rule 5 proceeding.

5 Little bit of background just for the record, we saw
6 Mr. Irvin about a year ago. He was indicted in Arkansas, in the
7 Eastern District of Arkansas. May of 2013 we had an initial
8 appearance here because he was arrested here in Iowa, initial
9 appearance and Rule 5 proceeding back on May 24 of 2013.

10 At that time I released Mr. Irvin on some conditions,
11 ordered him to appear in Arkansas to face the charges. He did
12 that. He's been under supervision here by United States
13 Probation, and I believe last information I had is he has a
14 trial date upcoming in Arkansas I believe in June unless that's
15 been changed recently.

16 Mr. Irvin is now here because the United States
17 attorney in Arkansas has filed a motion to revoke his pretrial
18 release, and there are some allegations that Mr. Irvin was in
19 contact with the minor victim in the case which, if true, would
20 be a violation of his terms of release.

21 Let me ask this. Mr. Irvin, have you seen a copy of
22 the -- the warrant and the motion to revoke pretrial release
23 that's been filed in Arkansas?

24 THE DEFENDANT: Yes, yes, Your Honor.

25 THE COURT: Okay. And for the record, sir, would you

1 tell me your full name.

2 THE DEFENDANT: Dennis John Irvin.

3 THE COURT: Okay. And how old are you, sir?

4 THE DEFENDANT: I'm 45.

5 THE COURT: Okay. Are you currently under the
6 influence of anything that might make it hard to understand what
7 we talk about today?

8 THE DEFENDANT: No, sir.

9 THE COURT: Okay. I am going to tell you about
10 certain of your constitutional rights. You have the right to
11 remain silent. That means you don't have to say anything to
12 anyone. If you give up that right and make a statement, the
13 prosecutor can and probably will use anything you say against
14 you.

15 Therefore, I strongly suggest that you not say
16 anything to anyone unless you talk it over with your lawyer
17 first and decide it would be in your best interests to do that.
18 Even if you've already given a statement, you don't have to say
19 anything else. And if you start making a statement, you have
20 the right to stop at any time.

21 Sir, do you understand your right to remain silent?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. You also have the right to be
24 represented by a lawyer both in Arkansas and here in these Iowa
25 proceedings. If you'd like to hire a lawyer here in Iowa, I can

1 give you time to do that. Or if you want to have a lawyer here
2 but you can't afford one, then I'll appoint one for you. And if
3 I do appoint a lawyer for you, that -- the Court would pay that
4 lawyer's fees and expenses.

5 Sir, do you understand your right to have a lawyer?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. And I do see there's a
8 financial affidavit here on the bench. Are you asking to have a
9 lawyer appointed for you here in Iowa?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. And, Mr. Metzgar, are you
12 available to represent Mr. Irvin?

13 MR. METZGAR: I am.

14 THE COURT: Okay. Mr. Irvin, I'm going to appoint
15 Mr. Metzgar who's at the table there with you to be your lawyer
16 for these Iowa proceedings in this matter.

17 Mr. Metzgar, have you had an opportunity to talk with
18 Mr. Irvin about whether he -- what his position is on being
19 removed? The -- basically the Eastern District of Arkansas is
20 asking us to remove Mr. Irvin there so he can face the petition
21 to revoke his pretrial release. What is Mr. Irvin's position?

22 MR. METZGAR: His position I guess is he should be
23 allowed to be released and basically appear in Arkansas again.

24 THE COURT: All right. Mr. Duax, what's the
25 government's position?

1 MR. DUAX: Government's position is that we'd request
2 that Mr. Irvin be detained and transported back to the Eastern
3 District of Arkansas.

4 THE COURT: Are the parties prepared to address the
5 issue of detention and having Mr. Irvin removed by the United
6 States marshals at this time, or would you like to schedule a
7 hearing within a couple of days? Mr. Duax?

8 MR. DUAX: I'd like to schedule a hearing next week.

9 THE COURT: Mr. Metzgar? I think the government has
10 the right --

11 MR. METZGAR: Yes.

12 THE COURT: -- of up to three days, so I don't think
13 there's much of an argument. But anything --

14 MR. METZGAR: No.

15 THE COURT: Okay.

16 MR. METZGAR: I was going to say we have a 2:30 if you
17 want to schedule --

18 THE COURT: That's on Tuesday; right?

19 MR. METZGAR: Yes.

20 THE COURT: We have some time available on Monday as
21 well if -- Mr. Duax, you think the government could be ready by
22 Monday afternoon?

23 MR. DUAX: Your Honor, it's going to take a little bit
24 of time. We may have out-of-state people that we need to get
25 here. The two ICE agents that did the investigation that

1 underlies the motion to revoke are both from Arkansas, so at the
2 earliest Tuesday would be -- the government could be ready to
3 present testimony.

4 THE COURT: What -- we just scheduled a 2:30 on
5 Tuesday. Three would be okay? All right. Let's do 3:00 on
6 Tuesday. That's June 3, 3:00 here in this courtroom. We'll
7 address the issue of detention. Mr. Irvin will remain in
8 custody between now and that detention hearing. And then we'll
9 take up the issue at that time.

10 Anything further at this time, Mr. Duax?

11 MR. DUAX: Your Honor, one question.

12 THE COURT: Sure.

13 MR. DUAX: For purposes of this hearing, would the
14 Court permit either one or both of the agents to testify via
15 video teleconference?

16 THE COURT: Any objection to that, Mr. Metzgar?

17 MR. METZGAR: No.

18 THE COURT: All right. I think under the
19 circumstances that seems like a good idea, so I'll allow that.

20 MR. DUAX: Thank you, Your Honor.

21 THE COURT: All right. Anything further then,
22 Mr. Duax?

23 MR. DUAX: No, Your Honor.

24 THE COURT: All right. Anything further at this time,
25 Mr. Metzgar?

1 MR. METZGAR: No, Your Honor.

2 THE COURT: All right. We'll be in recess.

3 (The foregoing hearing was

4 concluded at 9:34 a.m.)

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CERTIFICATE

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S/Shelly Semmler
Shelly Semmler, RMR, CRR

6-19-14
Date